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7 THE HONORABLE RICARDO MARTINEZ
8 HEARING DATE: DECEMBER 16, 2005
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LISA MILLER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA;
ALASKA AIRLINES, INC.; MARLATT
FUNERAL HOME; and DOES 1 through 10
inclusive;

Defendants.

NO. C04-2307 RSM
MARLATT MORTUARY, INC.'S
MOTION FOR SUMMARY
JUDGMENT

FACTS

This case involves the transportation of cremated human remains from the Seattle area to San Diego, California. Plaintiff, Lisa Miller, claims that defendant, Marlatt Funeral Home ("Marlatt"), failed to provide adequate documentation to allow her to travel with the cremated remains. Plaintiff further claims that as a result of the alleged inadequate documentation her luggage was searched improperly by defendant United States of America through the

1 Transportation Security Administration. This search, she alleges, resulted in the plastic
2 receptacle containing the remains being opened. After the death of Charles Mason, a distant
3 relative of plaintiff, she informed Marlatt that she intended to take the remains from Seattle to
4 San Diego. Marlatt did not transport the remains nor did it have any involvement in handling
5 the remains after they were picked up by plaintiff.
6

7 Plaintiff alleges that on March 29, 2003, she gave the urn containing the cremated
8 remains to co-defendants Alaska Airlines and/or the Transportation Security Administration
9 (U.S.A) upon arrival at Seatac Airport. Plaintiff further alleges that the urn was opened and
10 that the contents were partially spilled inside her luggage.

11 Marlatt packaged the remains consistent with proper industry practice by sealing the
12 bag containing the remains before sealing the urn. Additionally, Marlatt affixed a label that
13 stated as follows:

Marlatt Crematory
713 N. Central Ave. N.
Kent, WA 98022
(253) 852-2620

We hereby certify that the enclosed cremated remains are those of:
Charles Augustus Mason, Jr.
Whose remains were cremated on March 26, 2003

By order of:
MARLATT FUNERAL HOME
Our registration # 5923-488
Crematory representative

1 of 1

24 Marlatt also provided plaintiff with multiple copies of the death certificate for Charles
25 Augustus Mason and copies of all other pertinent documentation.

1 Plaintiff's sole allegation against Marlatt is that Marlatt failed to provide her with a
 2 written permit to transport the body. Plaintiff alleges that had Marlatt provided such a permit
 3 that it would have "served to assist in the harm caused to Plaintiff." (Complaint #19).

4 **PLAINTIFF'S DEPOSITION TESTIMONY**

5 Plaintiff's deposition was taken on September 9, 2005. During her deposition plaintiff
 6 was asked the following questions and provided the following responses:

7 **Page 120:**

8 4 Q. When you arrived at Marlatt on the day that you
 9 5 did -- I don't know if I have an exact date with me, but a
 10 6 day or so before you left for San Diego -- tell me the
 11 7 content of the discussions that you had with the folks at
 12 8 Marlatt about what you were going to be doing.

13 9 A. I gave them the Power of Attorney and stuff that
 14 10 had the little paper that my mom -- that introduced me. And
 15 11 I asked them, "What else do I need? Because we have this
 16 12 bereavement fare. It's only because we're transporting the
 17 13 remains to get on the plane. What else do we need?" They
 18 14 got me a copy of the death certificate because it wasn't the
 19 15 certified one yet. And that was basically our conversation.

20 16 Q. And so they provided you with the death
 21 17 certificate?

22 18 A. Uh-huh.

1 19 Q. Did they provide you at that time with a copy of
2 20 the two-page document that we looked at earlier?

3 21 A. Yes. And the invoice.

4 22 Q. So you had all of those documents?

5 23 A. Yes.

6 24 Q. And they also gave you the urn, which was the black
7 25 urn that we looked at earlier?

9 **Page 121:**

10 1 A. Yes.

11 2 Q. And on that urn was a sticker that indicated that

12 3 it was the cremated remains of Charles Mason?

14 4 A. Yes.

15 **Page 128:**

16 19 Q. Would you agree with me that you and I are capable
17 20 of looking at that urn and at least recognizing that there
18 21 were cremated remains inside based on the labeling on the
19 22 outside, correct?

20 23 A. Yes.

22 24 Q. There is really a single allegation against my
23 25 client. And that allegation is that there was an additional

24 **Page 129:**

25 1 permit that could have been given to you that could have

1 2 somehow made a difference. And putting aside the legal
2 3 aspects of that, this is the question I have for you.

3 4 If my client would have handed you a piece of paper
4 5 other than the pieces of paper that they handed you, would
5 6 you not just have put it in the same envelope that you put
6 7 the other stuff in?

7 8 A. Yes.

9 9 Q. And nobody at Alaska Airlines asked you for that
10 10 envelope?

11 11 A. No one.

12 12 Q. And nobody at the TSA asked you for that envelope?

13 13 A. No one.

14 14 Q. And even though you didn't think you had to, you
15 15 didn't offer it to anyone at the airport, did you?

16 16 A. No.

17 17 Q. You would agree with the statement in one of your
18 18 emails that the urn was clearly labeled, correct?

19 19 A. Yes.

20 22 **Page 132:**

23 23 Q. You said you had an envelope with the documentation
24 24 in it.

25 25 Where was that?

1 **Page 133:**

2 A. It was -- I believe I had my purse, so it was in my
3 purse.

4 Under questioning by Caryn Jorgensen, counsel for Alaska Airlines:

5 **Page 43:**

6 Q. And you don't remember telling the Alaska Airlines
7 person, I have urns in my backpack, what do I do with them?

8 A. Well I didn't think that was necessary since they
9 knew the purpose of my trip. And since they knew the

10 **Page 44:**

11 1 purpose of my trip -- that was the main purpose of my
12 2 trip -- then they should have instructed me what to do.

13 3 Q. My question is: Did you tell an Alaska Airlines
14 4 representative, I have an urn in this piece of luggage?

15 5 A. No. I didn't tell them that I have an urn in this
16 6 piece of luggage.

17 **Page 45:**

18 22 Q. Did you tell any of the TSA representatives that
19 23 one of your bags contained human remains?

20 24 A. No.

21 Under questioning by Priscilla Chan counsel for U.S.A.:

22 **Page 98:**

1 8 Q. When you were talking to the Alaska agent at the
2 9 ticket counter, did you ever ask whether or not the contents
3 10 in the backpack would be disrupted if you checked it in?

4 11 A. No.

5 12 Q. And did you ask either an Alaska agent or a TSA
6 13 agent the risks, if any, to the contents of your backpack if
7 14 it left your possession?

8 15 A. No.

9 10 **Page 100:**

11 7 Q. When you brought your backpack over to the TSA
12 8 station, who did you hand it over to?

13 9 A. To the TSA agent.

14 21 Q. Did you ask him any questions or talk to him?

15 22 A. No.

16 17 **Page 101:**

18 24 Q. So did you give the TSA agent or the agent at the
19 25 TSA station any kind of documentation whatsoever to show

20 21 **Page 102:**

22 1 that you were giving him a backpack with human remains in
23 2 it?

24 3 A. No. But the documentation was on the container.

25 6 Q. So you didn't give him any pieces of paper

1 7 separately that stated that there was any human remains in
2 8 the backpack, correct?

3 9 A. No one ever asked me for anything.

4 10 Q. Is that correct?

5 11 A. That's correct.

6 12 Q. Okay. We talked about labels and any physical
7 13 documents.

8 14 Did you say anything verbally to the agent at the
9 15 TSA station about the presence of any human remains in the
10 16 backpack?

11 17 A. At the Seattle airport?

12 18 Q. Yes.

13 19 A. No.

LEGAL ARGUMENT

14 A cause of action for negligence requires the plaintiff to show (1) that the defendant
15 owed a duty to the plaintiff, (2) breach of that duty, (3) an injury , and (4) a proximate cause
16 between the breach and the injury. Travis v. Bohannon, 128 Wn.App. 231, __, 115 P.3d 342
17 (2005). In this case, based on plaintiff's own testimony, there is no proximate cause for her
18 alleged injury. Plaintiff alleges in her complaint that the failure of Marlatt Funeral Home to
19 provide her with a permit somehow enhanced the chances that she would suffer an injury.

20 However, it is undisputed that Marlatt provided a death certificate for Charles Augustus
21 Mason. It is undisputed that plaintiff was provided with a two-page invoice outlining the fact

1 that Marlatt Funeral Home had cremated the earthly remains of Mr. Mason. It is also
 2 undisputed that the identifying permit on the urn itself identified the fact that the urn contained
 3 the cremated remains of Charles Augustus Mason, Jr.

4 Ms. Miller testified that even if Marlatt Funeral Home had provided her with an
 5 additional permit¹ she would have placed it with all of her other paperwork related to Mr.
 6 Mason's death, cremation and transportation. Ms. Miller further testified that no representative
 7 of Alaska Airlines or the Transportation Security Administration ever asked her for any
 8 documentation.

9 Finally, and most striking, is the fact that Ms. Miller testified she did not offer any
 10 documentation to anyone at Seatac Airport.

11 Ms. Miller also testified that the urn was clearly labeled as containing the cremated
 12 remains of Charles Augustus Mason, Jr.

13 Admittedly, the issue of proximate cause is usually a question for the trier of fact.
 14 Levea v. G.A. Gray Corp. 17 Wn.App. 214, 219, 562, P.2d 1276 (1977). However, the
 15 existence (or non-existence) of proximate cause may be determined as a matter of law if
 16 reasonable minds could not differ. Hertog v. City of Seattle, 138 Wn. 2d 265, 282, 979 P.2d
 17 400 (1999).

18 In this case, Marlatt Funeral Home provided plaintiff with all necessary documentation
 19 to transport the cremated remains of Mr. Mason to California. Even if, as plaintiff alleges,
 20 Marlatt failed to provide an additional permit nothing different would have happened. Plaintiff

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 25¹ Marlatt Funeral Home specifically denies that any such permit was required.

1 would have placed the additional permit in the envelope she carried and no one would ever
2 have seen it.

3 Based on the foregoing, plaintiff cannot establish a causal nexus between any act or
4 omission on Marlatt's part and plaintiff's alleged injury.

5 DATED: November 23, 2005.

6 LAW OFFICES OF KEITH M. KUBIK

7 By _____
8 Keith M. Kubik, WSBA #24218
9 Attorney for Defendant
10 Marlatt Mortuary, Inc.